

Newsletter

Amendment to the Legal Regime on Price Revision in Construction Contracts and Acquisition of Goods and Services



20 August 2021

On August 18 it was published Decree-Law no. 73/2021, which amends the legal regime on price revision of public and private constructions and acquisitions of goods and services, approved by Decree-Law no. 6/2004, of 6 January.

This amendment intends to update the legal regime on price revision (from 2004) to the Public Contracts Code ("PCC"), approved by Decree-Law no. 18/2008, of 29 January.

From the set of amendments introduced by the legislator, the following innovations may be highlighted:

Modification of price revision clauses (article 3)

Correction or modification of the price revision scheme established in the tendering specifications should be requested by the tenderers **within the first third of the deadline granted for the submission of the bid.**

In case of omission of the tendering specifications, the price revision scheme should also be submitted within the same timeframe.

In this context, failure to identify price revision formula established by the contracting authority within the second third of the deadline granted for the submission of the proposals, in reply to the above-mentioned requests, constitutes **grounds for the rejection of the tender.**

Price revision of supplementary works (article 11)

Price revision of supplementary works now operates as follows:

- ✓ For works of the same type of works foreseen in the contract, the contractual revision scheme shall apply, **provided that those supplementary works are carried out in similar conditions as those of the contractual works;**
- ✓ For works of a different type from other works foreseen in the contract or **works of the same type but performed under different conditions,** the contractor must submit an offer with price and execution time for such works, in which case formula or warranty costs price revision methods shall apply depending on the type, quantity and duration of those works.

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Extension of the contractual execution time (article 13)

Any extension of the contractual execution time implies a price revision calculated in accordance with the readjusted payment plan, provided that such extension is not due to the contractor's fault. Hence, the application of the readjusted payment plan regime is no longer limited to legal extensions.

Responsibility for price revision calculation

As a rule, the construction owner must calculate the price revision, unless otherwise provided in the contract.

However, the legislator has defined a maximum **60-day period** within which the construction owner must comment on the price revision calculations proposed by the contractor. In the absence of any communication within such period, the calculations submitted by the contractor shall be deemed accepted (article 15, paragraphs 3 and 4).

It is acknowledged that the result of the price revision, calculated at the end of the contractual execution time, including legal extensions or determined by judicial or arbitral award, is not limited by the Base Price of the contract or by the thresholds related to the choice of the public procurement procedure (article 1, paragraph 5).

Payment of the price revision (article 17)

The deadline for payment of the price revision is **30 days, without further notice**, counted from the verification of the situations listed in article 299 of the PCC, applicable *mutatis mutandis*, unless otherwise contractually foreseen.

Statute of limitation of the right to price revision (article 19)

The statute of limitation of the right to price revision has been extended to **one year upon provisional reception of the work**, except in the cases referred to in the paragraphs of article 19 of Decree-Law no. 73/2021, of 18 August.

On the other hand, if the construction owner does not execute the final bill of the works, the right to price revision expires upon definitive reception of the work.

Decree-Law no. 73/2021 of 18 August enters into force on **17 September 2021** and shall apply to the contracts resulting from public procurement procedures initiated after that date.

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